TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 591

THE WEST VIRGINIA STATE BOARD OF EDUCATION, ETC., ET AL., APPELLANTS,

vs.

WALTER BARNETTE, PAUL STULL AND LUCY MCCLURE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

FILED DECEMBER 16, 1942.

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[fol. a]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA, AT CHARLESTON

WALTER BARNETTE, PAUL STULL, and LUCY MCCLURE, Plaintiffs,

vs.

THE WEST VIRGINIA STATE BOARD OF EDUCATION, Composed of Honorable W. W. Trent, President, Mary H. Davisson, Thelma B. Loudin, Raymond Brewster, Lydia C. Hern, L. V. Thompson, and Mrs. Douglas W. Brown, and All Other Boards, Officials, Teachers and Persons Subject to the Jurisdiction and Control of Said State Board of Education, Defendants

Hayden C. Covington, Esq., and Horace S. Meldahl, Esq., Counsel for Plaintiffs and Appellees, and W. S. Wysong, Esq., Ira J. Partlow, Esq., and Samuel Biern, Esq., Counsel for Defendants and Appellants.

(Be It Remembered that heretofore, to-wit: On the 19th day of August, 1942, came the Plaintiffs, by Counsel, and filed in the office of the Clerk of the District Court of the United States for the Southern District of West Virginia, at Charleston, their complaint and appendix therewith, and, upon the hearing of this action before the three-judge court, the Plaintiffs were permitted to file an amended complaint, which amended complaint and appendix therewith are in the words and figures as follows:)

[fol. 1] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF WEST VIRGINIA, CHARLESTON DIVISION

[Title omitted]

FIRST AMENDED COMPLAINT

To Said Honorable Court:

Now come the above named plaintiffs and complain of the above named defendants, and for a cause of action would show:

1. JURISDICTION is based upon existence of a "federal question" irrespective of the amount of money involved, in

that this action arises under the Constitution and laws of the United States and involves purely and solely "civil rights" under and by virtue of the Civil Rights Act of 1871 and Section 24 (14) of the Judicial Code [28 U. S. C. 41 (14)], because this is an action brought to redress the deprivation of "civil rights" by persons acting under color of statutes and regulations of a state. The Court also has jurisdiction by virtue of Section 24 (1) of the Judicial Code [28 U. S. C. 41 (1)], in that the cause of action arises under [fol. 2] the Constitution and laws of the United States and that as to each person for whom this action is brought the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.

2. All the plaintiffs are citizens of the United States of America and resident citizens of the State of West Virginia.

3. Each individual defendant is a resident citizen of the United States of America and of the State of West Virginia. The defendant-board is a political subdivision of the State of West Virginia. Said individual defendants are now and were at all times material hereto the duly elected, qualified and acting members of the West Virginia State Board of Education, and have under their control all local school boards, county and municipal school districts and the respective officials and teachers of all public schools within said State. That the defendant-board is a body politic and corporate in law and has the general supervision over the enforcement of rules and regulations prescribed by it for the conduct of all public schools within said State. That the individual defendants and all the officials and teachers of the various public schools of said State are agents, servants and employees of the West Virginia State Board of Education in the enforcement of all said rules and regulations.

4. Plaintiffs and their children of compulsory school age are Jehovah's witnesses and bring this action for themselves individually and as a class action for the use and benefit of their children and for all other of Jehovah's witnesses and their children of compulsory school age throughout the entire State of West Virginia.

[fol. 3] 5. That Jehovah's witnesses are an unincorporated body of followers of Jesus Christ who are entirely

devoted to His Father, ALMIGHTY GOD "whose name alone is JEHOVAH", and who are diligent and faithful in carrying out the commands of the Most High God as recorded in Holy Writ and are not a sect, cult or religion. Each of them is in a covenant with Almighty God to obey His will and by the terms of which covenant they are required to give witness to the name, honor and majesty of Almighty God, JEHOVAH, and His Theocratic Government. Jehovah's witnesses are not a recently organized group but members of such group have been active on earth at all times during more than six thousand years last past. Jehovah's witnesses accept the Bible as the Word of Almighty God, and conscientiously believe that a failure to obey the precepts and commandments laid down therein will in due time result in their eternal destruction at the hand of Almighty God. Plaintiffs, their children and all other of Jehovah's witnesses sincerely and honestly believe that the act of participating in the flag-salute ceremony or saluting any flag of any nation or state contravenes the law of ALMIGHTY GOD in this, to wit:

(a) To salute a flag would be a violation of the command of Almighty God stated in the Bible book of Exodus, chapter 20, verses 2, 3, 4, 5 and 6, which reads as follows:

"I am JEHOVAH thy God, • • • Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth: thou shalt not bow down thyself to them, nor serve them: for I JEHOVAH thy God am a jealous God; visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me; and showing mercy unto thousands of them that love me, and keep my commandments."

in that said salute signifies that the flag is exalted, as an [fol. 4] emblem or image of the government, above JEHOVAH GOD, and as such entitled to the honor, devotion, obeisance and reverence of the saluter, which are due only to JEHOVAH and His Son the Lord Jesus Christ.

(b) To participate in a flag-salute ceremony or to salute a flag means, in effect, to participate in a religious "rite" on ceremony and that the one saluting the flag ascribes sal-

vation and protection to the thing or power which the flag stands for and represents, and that since the flag and the government it symbolizes are of the world and not of JEHOVAH GOD, it is wrong only for one in a covenant with JEHOVAH, such as each plaintiff and his children, to salute the flag, and for him to do so constitutes his denial of the supremacy of Almighty God, and contravenes God's express command set forth in Holy Writ, which results in everlasting destruction by JEHOVAH of such person's right to life.

6. That plaintiffs and all other of Jehovah's witnesses for whom this action is brought at all times endeavored to instruct and inform their children of the truths, including the above commandments, set forth in the Word of God, the Bible. They desire to educate their children and bring them them up as upright and sincere followers of Jesus Christ, all as it is their right, privilege and duty to do; that said children have been so instructed from an early age and are now and have been at all times material hereto sincere believers in God's commandments written in the Bible and have faithfully endeavored to obey such.

7. Plaintiffs are loyal to the United States and the State of West Virginia and willingly obey its laws, but they nevertheless believe that their first and highest duty is to [fol. 5] their God and His commandments and laws, and that as true followers of the Lord Jesus Christ they have no alternative except to obey God's commandments and to follow their conscientious convictions. They are willing, in lieu of participating in said flag-salute ceremony, periodically and publicly to subscribe to the following pledge, to wit:

"I have pledged my unqualified allegiance and devotion to Jehovah, the Almighty God, and to His Kingdom, for which Jesus commands all Christians to pray.

"I respect the flag of the United States and acknowledge it as a symbol of freedom and justice to all.

"I pledge allegiance and obedience to all the laws of the United States that are consistent with God's law, as set forth in the Bible."

8. Plaintiffs and other of Jehovah's witnesses for whom this action is brought have children, aggregating many hundreds, who are of compulsory school age and bound by law

to attend the various public schools throughout the said State.

9. Section 5, Article 2, Chapter 18 of the Code of West Virginia, 1931, reads in part as follows:

Sec. 5. *General Powers and Duties.* Subject to and in conformity with the Constitution and laws of this State, the state board of education shall determine the educational policies of the State, except as to the West Virginia University, and shall make rules for carrying into effect the laws and policies of the State relating to education, including rules relating to * * * the general powers and duties of county and district boards of education, and of [school trustee], teachers, principals, supervisors, and superintendents, and such other matters pertaining to the public schools in the State as may seem to the Board to be necessary and expedient.

10. Section 5-A, Article 8, Chapter 18 of the Code of West Virginia, 1931, as last amended on Compulsory School Attendance, reads as follows:

Sec. 5-A. If a child be dismissed, suspended or expelled from school because of refusal of such child to meet the [fol. 6] legal and lawful requirements of the school and the established regulations of the county and/or state board of education, further admission of the child to school shall be refused until such requirements and regulations be complied with. Any such child shall be treated as being unlawfully absent from school during the time he refuses to comply with such requirements and regulations and any person having legal or actual control of such child shall be liable to prosecution under the provisions of this article for the absence of such child from school.

11. Section 9, Article 2, Chapter 18 of the Code of West Virginia 1931 as amended by Chapter 38 of the Acts of the Legislature of 1941, among other things reads as follows:

Section 9. In all public, private, parochial and denominational schools located within this state there shall be given regular courses of instruction in history of the United States, in civics, and in the constitutions of the United States and of the state of West Virginia, for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowl-

edge of the organization and machinery of the government of the United States and of the state of West Virginia. *The state board of education shall, with the advice of the state superintendent of schools, prescribe the course of study covering these subjects for the public elementary and grammar schools, public high schools and state normal schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools.*

12. Pursuant to authority given under the foregoing statutes the defendant-board has promulgated a regulation for the conduct of all public schools within said State, requiring that all pupils participate in the flag-salute ceremony. Said regulation was effective long prior to January 1942. On January 9, 1942, the defendant-board adopted the following regulation:

Whereas, The West Virginia State Board of Education holds in highest regard those rights and privileges guaranteed by the Bill of Rights in the Constitution of the United States of America and in the Constitution of West Virginia, specifically, the first amendment to the Constitution [fol. 7] of the United States as restated in the fourteenth amendment to the same document and in the guarantee of religious freedom in Article III of the Constitution of this State, and

Whereas, The West Virginia State Board of Education honors the broad principle that one's convictions about the ultimate mystery of the universe and man's relation to it is placed beyond the reach of law; that the propagation of belief is protected whether in church or chapel, mosque or synagogue, tabernacle or meeting house; that the Constitutions of the United States and of the State of West Virginia assure generous immunity to the individual from imposition of penalty for offending, in the course of his own religious activities, the religious views of others, be they a minority or those who are dominant in the government, but

Whereas, The West Virginia State Board of Education recognizes that the manifold character of man's relations may bring his conception of religious duty into conflict with the secular interests of his fellowman; that conscientious

scruples have not in the course of the long struggle for religious toleration relieved the individual from obedience to the general law not aimed at the promotion or restriction of the religious beliefs; that the mere possession of convictions which contradict the relevant concerns of political society does not relieve the citizen from the discharge of political responsibility, and

Whereas, The West Virginia State Board of Education holds that national unity is the basis of national security; that the flag of our Nation is the symbol of our National Unity transcending all internal differences, however large within the framework of the Constitutions; that the Flag is the symbol of the Nation's power; that emblem of freedom in its truest, best sense; that it signifies government resting on the consent of the governed, liberty regulated by law, protection of the weak against the strong, security against the exercise of arbitrary power, and absolute safety for free institutions against foreign aggression, and

Whereas, The West Virginia State Board of Education maintains that the public schools, established by the legislature of the State of West Virginia under the authority of the Constitution of the State of West Virginia and supported by taxes imposed by legally constituted measures, are dealing with the formative period in the development in citizenship that the Flag is an allowable portion of the program of schools thus publicly supported.

Therefore, be it Resolved, That the West Virginia Board of Education does hereby recognize and order that the com- [fol. 8] monly accepted salute to the Flag of the United States—the right hand is placed upon the breast and the following pledge repeated in unison: "I pledge allegiance to the Flag of the United States of America and to the Republic which it stands; one Nation, indivisible, with liberty and justice for all"—now become a regular part of the program of activities in the public schools, supported in whole or in part by public funds, and that all teachers as defined by law in West Virginia and pupils in such schools shall be required to participate in the salute honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an act of insubordination, and shall be dealt with accordingly.

13. Said Board modified said salute at the instance of the Parents and Teachers Association, The Boy and Girl

Scouts, The Red Cross, and The Federation of Women's Clubs, because 'being too much like Hitler's'. Said Board has given no consideration to the wishes of Jehovah God as set forth in the Holy Bible, and the salute as modified was too much like Hitler's. Said State Board, its agents, servants and employees have been arbitrary and discriminating toward Jehovah's witnesses, who have been trying to get them to correct these requirements without the necessity of legal proceedings. That recently and since the above described change from the "stiff-arm" salute the said Board has readopted, by resolution, said "stiff-arm" salute, requiring the saluter to keep the raised-hand palm turned up when saluting.

14. Since 1940, throughout said State, great numbers of children of Jehovah's witnesses, on refusing to participate in said ceremony and salute the flag as required, have been expelled from school and denied the right to attend the public schools until they would agree to violate and would actually violate their conscience by participating in said flag-salute ceremony. That great numbers of said children [fol. 9] have been excluded from attending any of the public schools of said State during the terms of school since 1940 to this date. That the various principals and teachers of said schools that have excluded said children have acted as agents of and under direction of the defendant-board. That the sole reason for said expulsion and exclusion of said children and their subsequent inability to attend any of said public schools is their refusal to salute the flag and not because they have violated any other rule of the respective schools they had attended. In other respects said children were well behaved and obeyed all rules except that pertaining to the flag salute.

15. That numerous parents of said children have been actually charged, prosecuted and convicted for the alleged offense of contributing to delinquency of said minors who have been denied schooling by the defendant-board, its agents, servants and employees as aforesaid. The basis for these prosecutions has been the fact that said parents taught their children the Word and commandments of Almighty God, and the fact that said children elected to refuse to salute the flag.

16. That under the school laws of said State each person for whose benefit this action is brought has children who

are required by such laws to attend the public schools of the district in which he lives unless said children are receiving equivalent education in a private school. That each of the persons for whose benefit this action is brought is financially unable to have his said child or children attend any private school where such equivalent instruction is obtainable. That if said children receive an education at all [fol. 10] the only place they can receive it is in the public schools of said State.

17. The defendants, their agents, servants and employees threaten to continue to enforce said flag-salute regulation so as to require said children to salute the flag or be permanently excluded from the public schools of said State.

18. That the 1942-1943 school term is now about to begin and in early September many hundreds of children of Jehovah's witnesses are required to enroll and will enroll in the public schools of this State. They will refuse to salute the flag. The children will be expelled by reason of the threatened continued enforcement of the above flag-salute regulations of defendant-board in every school throughout said State. Thus said children and their parents will be denied their civil and property rights contrary to law. That said parents have been, are now and will continue to be financially unable to provide said children instruction in private schools equivalent to that obtainable in the public schools.

19. That adult persons for whom this action is brought have been and are threatened with immediate continued prosecution under penal statutes prohibiting the contributing to allege truancy and alleged delinquency of their minor children of compulsory school age because said children are by defendants denied the right to attend public schools.

20. That great numbers of children of compulsory school age for whom this action is brought have been and are threatened with proceedings against them under the delinquency laws of said State authorizing commitment of children adjudged delinquent to reformatories and training [fol. 11] schools maintained for criminally inclined juveniles.

21. That for each said adult to send his child or children to a private school maintaining standards approvable under

said State's educational laws would entail an annual expense of not less than $500 for each child, which expense would continue until each of said children reaches an age which exempts him from compulsory attendance at an approved school, requiring each of said adult persons to bear an average total expense exceeding $3,000, exclusive of interest and costs, which expense each of said adults would be required to pay or incur in order to comply with the compulsory education laws of said State.

22. By reason of the aforesaid conduct on the part of defendants, their agents, servants and employees, the plaintiffs and other of Jehovah's witnesses have been interfered with, and the exercise of their constitutional, civil and property rights has been frustrated, by the defendants. That the defendants' acts and threatened acts above described have produced and will continue to produce great, immediate and irreparable injury and loss to plaintiffs and all other of Jehovah's witnesses similarly situated in said State.

23. Plaintiffs and all others for whom this action is brought are without adequate remedy at law, and the above described conduct and the trespasses of defendants above described are continuous. Only a suit for injunctive relief will stop such unlawful conduct of defendants and it is only by injunctive process of this Court that plaintiffs can enjoy, exercise and practice their "civil rights" of free press, free speech, freedom of assembly and freedom to worship [fol. 12] Almighty God publicly. It is necessary that such injunctive relief hereinafter requested be granted in order properly and adequately to protect Jehovah's witnesses from the foregoing wrongs, injuries and irreparable damage committed against them by defendants, and in order properly to safeguard constitutional rights, civil and property, of all persons for whom this action is brought. The granting of the requested injunction will prevent a multiplicity of suits and actions at law, in which said aggrieved persons for whom this action is brought cannot adequately protect their said rights.

24. That Sections 5 and 9, Article 2, and Section 5-A, Article 8, of Chapter 18 of the Code of West Virginia, 1931, and the regulations thereunder promulgated by said State Board of Education requiring the flag-salute ceremony, are

unconstitutional, null and void AS CONSTRUED AND APPLIED to plaintiffs and all other of Jehovah's witnesses for whom this action is brought, because:

(a) They unreasonably abridge the rights of said parents and children freely to worship Almighty God according to His written law and the dictates of conscience.

(b) They unlawfully force and coerce said children to engage in a religious "rite" or ceremony contrary to their conscientious objection thereto as a condition precedent to enjoyment of fundamental personal rights.

(c) They unlawfully subject said parents and children to cruel and unusual punishment and burdens in that said persons are subjected to criminal prosecution and penalties under the laws prohibiting truancy and delinquency.

(d) They unreasonably abridge the rights of said parents [fol. 13] and children to have the children attend and receive education in free public schools of said State on equal terms with other inhabitants of said State.

(e) They unreasonably restrict said parents in their liberty of choice and direction in the upbringing of their children.

(f) They unreasonably restrict the liberty of the parents freely to impart to their children a knowledge of the commandments of Almighty God as recorded in Holy Writ, which requires said parents to bring their children up "in the nurture and admonition of the Lord".

(g) They unlawfully burden the liberty of said parents and children to maintain a home and enjoy the normal relationship thereof.

25. Each of the above enumerated infringements violates the First Amendment and the "due process" and "equal protection" clauses of the Fourteenth Amendment to the United States Constitution.

26. That Sections 5 and 9, Article 2, and Section 5-A, Article 8, of Chapter 18 of the Code of West Virginia, 1931, and the regulations thereunder promulgated by said State Board requiring the flag-salute ceremony, are unconstitutional, null and void ON THEIR FACE and in excess of the police power because such statutes and regulations have

been superseded by an Act of Congress duly passed and approved June 22, 1942 (Public Law 623, 77th Congress, Chapter 435, Second Session), providing and establishing for use of civilians certain rules and customs pertaining to display and use of and the manner of showing respect to the flag of the United States, Section 7 of which Act is as follows:

[fol. 14] Sec. 7. That the pledge of allegiance to the flag, "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all", be rendered by standing with the right hand over the heart; extending the right hand, palm upward, toward the flag at the words "to the flag" and holding this position until the end, when the hand drops to the side. HOWEVER, CIVILIANS WILL ALWAYS SHOW FULL RESPECT TO THE FLAG WHEN THE PLEDGE IS GIVEN BY MERELY STANDING AT ATTENTION, men removing the headdress. Persons *in uniform* shall render the military salute.

which said Federal statute is, as to civilians, merely ADVISORY, not MANDATORY, and provides *no penalty*. Any State statute or regulation prescribing a penalty for violating the terms of such Federal statute is in excess of authority, contrary to the statute and void. That by virtue of the foregoing Federal statute all power and authority vested in the respective State governments to promulgate rules and regulations regarding the conduct of persons toward the national flag was automatically ousted and withdrawn from the States by virtue of the passage of said Act of Congress. Therefore the aforesaid West Virginia statutes and regulations are null and void and are in effect repealed by the enactment of said Federal statute. In the event that the Court concludes that said State statutes and regulations have not been entirely annulled and repealed by the passage of said Federal statute, the plaintiffs say that the prescribed flag-salute ceremony for public schools of said State are void because expressly contrary to said Federal statute, which provides that only persons *in uniform* (of the United States Army and Navy) are required to give the military salute or engage in the flag-salute ceremony required by said State statutes and regulations thereunder promulgated by defendant board. Further-

more, said Federal statute does not require a civilian, adult [fol. 15] or child, to give any salute whatsoever to the national flag, and specifically does not require the giving of the salute or participation in the ceremony prescribed by the defendant-board. All that may be lawfully required of any civilian, adult or child, is merely "standing at attention", even though a child be in attendance at a public school in said State. That by reason of the foregoing the said State statutes and regulations thereunder promulgated by said defendant-board are void because in conflict with the United States Constitution and the above Federal statute.

27. That the application and enforcement of said State statutes and flag-salute regulations or any of them, against pupils who conscientiously object to participation in such ceremonial, do not instill love of liberty and democratic principles and devotion to country in the minds of the youth. The giving of the salute does not prove loyalty to the nation because any disloyal person can salute the flag so as to hide his disloyalty. The natural tendency of compelling a conscientious objector to give the salute is to hinder and obstruct loyalty to country because of attempted coercion and oppression of conscience. The enforcement of said statutes and regulations in such manner diminishes respect and increases disrespect for flag and country by inspiring acts of lawlessness and violence against persons who lawfully elect to render obeisance and obedience exclusively to Almighty God, and it provides a means for every adherent of and conniver with the "fifth column" to conceal his true identity. See, in further corroboration of the above matters the booklet "God and the State", copy of which is attached hereto and made a part hereof, marked APPENDIX.

[fol. 16] 28. That the refusal of children of Jehovah's witnesses to salute the flag or otherwise participate in the unlawfully and illegally required flag-salute ceremony does not present a clear and present danger against peaceful, lawful, proper and regular operation of any public school in said State, nor does such refusal present a clear and present danger against the peace of the law-abiding teachers and pupils of any such school. That there is no clear and present danger that any other pupils will refuse to salute the flag unless they become Jehovah's witnesses,

which is most unlikely because of the extreme unpopularity of and persecution now prevailing against Jehovah's witnesses as result of persistent misrepresentation regarding their loyalty to *the government.*

29. That there is nothing in the faith or practices based upon the faith of persons for whom this action is brought that can be claimed to be contrary to morals, health, safety or welfare of the public, the State or the nation.

30. That because constitutionality and validity of State statutes of West Virginia are drawn in question, and because plaintiffs are asking for a preliminary injunction restraining the enforcement of said statutes, plaintiffs are entitled under Section 266 of the Judicial Code (28 U. S. C., Section 380, as amended) to have this Court call a statutory three-judge court consisting of another United States District Judge and a United States Circuit Judge, or to include two United States Circuit Judges, to hear this cause, both on application for preliminary injunction and on final hearing, as provided by law.

31. That plaintiffs allege that the methods for securing a definite ruling in the state courts cannot be pursued with [fol. 17] full protection of the constitutional claims, because one of the plaintiffs, on behalf of all other of Jehovah's witnesses in said State, has three times applied to the Supreme Court of Appeals of the State of West Virginia for a writ of prohibition to have such court construe the regulation and statutes so as to prevent defendants from excluding from the public schools or otherwise punishing children of Jehovah's witnesses who refuse to salute the flag or engage in aforesaid ceremony because of its conflict with their conscientious scruples above described; or to exempt said children from giving the flag salute and from participating in said ceremony or to permit them to stand while others salute and to permit said children to substitute the pledge hereinbefore mentioned for the one required by defendant-board; and said plaintiff in said three applications also requested said court to declare the statutes and regulation unconstitutional under the State and Federal Constitutions. That although said application for writ of prohibition is the appropriate and proper remedy in the state courts to review the question and to protect the constitutional rights of Jehovah's witnesses, the said Supreme Court of Appeals

has declined three times to grant said plaintiff for himself and for other of Jehovah's witnesses the relief requested by them; there is no clear and adequate remedy in the state courts that will dispose of the constitutional questions as speedily as the remedy employed here. There are many hundreds of persons involved in many school districts in all the various counties of the State which will require separate suits or a multiplicity of actions to accomplish the determination here sought in one action for the whole State. There is, therefore, no adequate remedy in the state courts. [fol. 18] Wherefore your plaintiffs offer to make such bond as may be prescribed by the Court, with good and sufficient security to be approved by the Court, and pray as follows:

(A) That a copy of this complaint and the notice of hearing on application for temporary injunction be served upon the Governor and the Attorney General of said State.

(B) That the Court grant and issue an interlocutory or preliminary injunction, after notice to the defendants, restraining each of the above named defendants, their officers, agents, servants and employees, from enforcing said statutes and regulations hereinbefore described as to plaintiffs and all other of Jehovah's witnesses for whom this action is brought, and from excluding from the public schools of said State children of Jehovah's witnesses on account of their refusal to salute the flag or participate in the flag-salute ceremony; and plaintiffs further pray that after calling a three-judge court, this Court, upon a consideration of this complaint, order the application for a preliminary injunction or temporary restraining order above prayed for and contained herein, to be set down at a fixed time and place for hearing before said three-judge statutory court; and that notice issued unto each of the defendants, commanding them to appear at such time and place and show cause, if any they have, why the preliminary or temporary restraining order restraining the defendants, their officers, agents, servants and employees, from enforcing said statutes and regulations as to plaintiffs and other of Jehovah's witnesses should not be granted as prayed for by plaintiffs.

(C) Plaintiffs further pray that upon a final hearing this Court enter an order declaring said above described statutes

[fol. 19] invalid and void under the First and Fourteenth Amendments to the Federal Constitution to which they are contrary as construed and applied to plaintiffs' activities and conduct, and also declaring the regulations promulgated under said statutes void and invalid on their face because they are contrary to and have been superseded by an Act of Congress and because they have been so construed and applied and will be so construed and applied by defendants to deprive plaintiffs and other of Jehovah's witnesses of their right to exercise and enjoy freedom to worship Almighty God in conformity with His written commandments contained in the Bible and in accordance with the dictates of conscience, and their "civil rights" of freedom of speech, of press and of assembly. Plaintiffs further pray that said preliminary injunction be made permanent upon a final hearing, restraining the defendants, their officers, agents, servants and employees from enforcing said statutes and regulations as to plaintiffs and other of Jehovah's witnesses. Plaintiffs further pray for such other and further relief as they may show themselves justly entitled to in the premises.

Hayden C. Covington, per H. S. M., Attorney for Plaintiffs, Office and P. O. Address: 117 Adams St., Brooklyn, N. Y.; Horace S. Meldahl, Attorney for Plaintiffs, Office and P. O. Address: Davidson Bldg., Charleston, W. Va.

* * * * * * *

[fols. 20-21] *Duly sworn to by Horace S. Meldahl. Jurat omitted in printing.*

[fol. 22] Appendix to First Amended Complaint

GOD and THE STATE: your everlasting future hinges on how you decide this interesting issue, at a time when religious-totalitarian dictators put God second, frightening the politicians to cry for union of religion and state. How far may State laws go without encroaching on the claims of God? Should children be punished by the State for putting God first? World developments are forcing all inescapably to a personal decision!

Can you afford to pass by the Scriptural answers and vital information which this booklet presents for your safe guidance to a happy future?

The Publisher.

Author: J. F. Rutherford

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Made in the United States of America

[fol. 23] GOD AND THE STATE

When there is a conflict between two authorities, which one must be obeyed?

The State inflicts punishment upon a person who fails or refuses to obey its law.

One who has agreed to obey God's law and then fails or refuses to obey is subject to punishment by death.

A person conscientiously believes that obedience to a certain law of the State is a flagrant violation of God's law. What shall that conscientious person do?

There is a wide distinction between a person who has made a covenant to do God's will and a person who has not made such a covenant.

Jehovah God requires of His children full obedience as a condition precedent to receiving everlasting life. (Proverbs 7: 1, 2) By His Word He has emphasized that rule from the time of Adam when in Eden until this very day. Adam failed to obey the commandments of Jehovah God, and the result to him was death. The rules of God never change and are the same toward all.—Malachi 3: 6; Acts 10: 34.

Life with the right thereto can be had and maintained only by the grace of God. Life everlasting can be had by those only who are obedient unto God. The word "father" means the one from whom life emanates. God is the Father, therefore, of those who gain life everlasting. He is the fountain of life. (Psalm 36: 9) He gives or administers life everlasting by and through Jesus Christ, His Execu-

tive Officer. "For the wages of sin is death; but the gift of God is eternal life, through Jesus Christ our Lord." (Rom- [fol. 24] ans 6: 23) There is no other possible way of obtaining life. (Acts 4: 12) Christ Jesus is the Beloved Son of God, and he says: "I delight to do thy will, O my God; yea, thy law is within my heart." (Psalm 40: 8) Because of his full and complete obedience unto his Father under the most trying conditions Jesus was given life immortal, the highest place in the universe next to Jehovah, and the administration of Jehovah's will. (Philippians 2: 8-11) Because of his complete obedience Christ Jesus is made "the Author of eternal salvation" to all that obey him. (Hebrews 5: 8, 9) It is of the greatest importance to know these facts, if one would live.

All of the human kind were born in sin because of the sin committed by Adam, and therefore all of his children inherited death. (Romans 5: 12) God has provided redemption and salvation of men from death by and through the sacrifice of the man Jesus unto death. God therefore provides the gift of life to all men who believe on the Lord Jesus Christ as the Savior and who then covenant to be obedient to the laws of God and hence obedient to Christ Jesus: "For as by one man's disobedience many were made sinners, so by the obedience of one shall many be made righteous."—Romans 5: 19.

One becomes a child of God when he exercises faith in God and in Christ Jesus as his Savior, and then agrees to do the will of God, and with him God makes a covenant. The one making the covenant, or who is taken into the covenant with Jehovah God, is then in the way to receive the gift of life. Jehovah's command to his covenant people is (Proverbs 7: 1, 2): "My son, keep my words, and lay up my commandments with thee. Keep my commandments, and [fol. 25] live; and my law as the apple of thine eye." The general rules announced in these texts apply to all men who shall ever gain life everlasting.

COVENANT PEOPLE

Jehovah God chose the Israelites as a "people for his name". In Egypt he made a covenant with that people and confirmed that covenant at Mount Sinai. The people of that nation, through Moses as their mediator, agreed to do whatsoever God commanded of them, and thus they vol-

untarily entered into the covenant. (Exodus 19: 5, 8) As a nation the Israelites broke their covenant and were cast away from God's favor, but there were some individuals who remained faithful unto the covenant. Only those who obeyed God's law, as Christ Jesus always does, were preserved unto life.

When the man Jesus became thirty years of age he presented himself to God and submitted to baptism in the Jordan, thus giving outward testimony that he had entered into a covenant with his Father by sacrifice. (Luke 3: 21-23) Jesus there became the head and chief of the antitypical spiritual Israelites. His disciples were Israelites by nature, eleven of whom continued faithful, and were taken into the covenant with Christ Jesus for the kingdom of God. Then in due time God began to take out from amongst the Gentiles, or other nations, a people for his name who would follow in the footsteps of Christ Jesus. (Acts 15: 14) Each one thus taken into the covenant must become a footstep follower of Christ Jesus, suffer reproaches like those that came upon Jesus, and be faithful even unto death. Such faithful followers of Christ Jesus are spiritual Israelites, chosen of God to be witnesses unto his name and his Kingdom. Concerning them it is written: "But ye are a chosen generation, a royal priesthood, an holy nation, a peculiar people; that ye should shew forth the praises of him who hath called you out of darkness into his maravellous light; which in time past were not a people, but are now the people of God; which had not obtained mercy, but now have obtained mercy." (1 Peter 2: 9, 10) "Ye are my witnesses," [fol. 26] saith God.—Isaiah 43: 12.

That which was written in the law and in the prophecies applies specifically to all Christians who follow Christ Jesus. Upon this point there is not a possibility of doubt, as it is written: "Now all these things happened unto them [natural Israel] for ensamples; and they are written for our admonition, upon whom the ends of the world are come. Wherefore let him that thinketh he standeth take heed lest he fall. Wherefore, my dearly beloved, flee from idolatry." (1 Corinthians 10: 11, 12, 14) "For whatsoever things were written aforetime were written for our learning, that we through patience and comfort of the scriptures might have hope."—Romans 15: 4.

Such true followers of Christ Jesus are accepted by Jehovah and acknowledged by him as his children or sons,

and these must be obedient to Jehovah God their Father, if they would receive life everlasting.

As children of God they must be obedient to his commandments; otherwise they could not live. To such Jehovah God says: "My son, forget not my law; but let thine heart keep my commandments." (Proverbs 3: 1) "Be thou faithful unto death, and I will give thee the crown of life." (Revelation 2: 10, *Am. Rev. Ver.*) Such are and must be witnesses to Jehovah and bear testimony to his name and to his kingdom, and hence they are called by the Lord Jehovah "My witnesses".—Isaiah 43: 10-12.

The Lord announces his purpose to provide a "great multitude" with the opportunity of life everlasting on earth. (Revelation 7: 9-17) All who compose the "great multitude" must agree to do the will of God, and therefore, exercising faith in the shed blood of Christ Jesus as their Redeemer, must consecrate themselves to do the will of God, and must then serve him and obey the commandments of the Lord. They are commanded to "seek righteousness" and "seek meekness", which means that they must endeavor to learn what is God's will concerning them and then to do that which is righteous by obeying the will of God.—Zep-[fol. 27] haniah 2: 1-3.

DUTY OF PARENTS

To all persons who have agreed to do the will of God he says: "See, I have set before thee this day life and good, and death and evil." (Deut. 30: 15) To his covenant people Jehovah says: "One law and one manner shall be for you, and for the stranger that sojourneth with you." (Num. 15: 16) "Ye shall have one manner of law, as well for the stranger, as for one of your own country; for I am the Lord your God."—Lev. 24: 22.

The "stranger" amongst the typical Israelites pictured those who are now on earth and who covenant to do the will of God and who, if faithful, shall form the "great multitude". Those who form the "great multitude" Jesus designates as his "other sheep", and when these are gathered unto the Lord and given life all shall be of "one fold" under Christ the great Shepherd. (John 10: 16) God's announced purpose is to grant life everlasting to those only who believe on him and on the Lord Jesus Christ and who render themselves in obedience. This rule applies to both

the spiritual Israelites and those of the "great multitude", that is, to all who shall live: "The Father loveth the Son, and hath given all things into his hand. He that believeth on the Son hath everlasting life; and he that believeth not the Son shall not see life; but the wrath of God abideth on him."—John 3: 35, 36.

TEACHING CHILDREN

Marriage and child-bearing are God's arrangement for humankind. All parents who have agreed to do the will of God, and who have children, are bound by the commandments of Almighty God *to teach their children the Word of God and to instruct them in the way of righteousness.* To his consecrated or covenant people Jehovah says: "Only take heed to thyself, and keep thy soul diligently, lest thou forget the things which thine eyes have seen, and lest they depart from thy heart all the days of thy life; but teach them thy sons, and thy sons' sons." (Deuteronomy 4: 9) "And these words, which I command thee this day, shall [fol. 28] be in thine heart: and thou shalt teach them diligently unto thy children, and shalt talk of them when thou sittest in thine house, and when thou walkest by the way, and when thou liest down, and when thou risest up." (Deut. 6: 6, 7) "Observe and hear all these words which I command thee, that it may go well with thee, and with thy children after thee for ever, when thou doest that which is good and right in the sight of the Lord thy God."—Deuteronomy 12: 28.

Addressing himself to his people who are in a covenant to do his will, Jehovah God gives this specific commandment: "Set your hearts unto all the words which I testify among you this day, which ye shall command your children to observe to do, all the words of this law."—Deuteronomy 32: 46.

It cannot properly be said that these laws of God apply only to the ancient Israelites. Exactly the contrary is expressed in God's Word. His law is the same toward all who *seek to live.* Children seek knowledge and must be taught, and it is the desire of all sane persons, both adults and children, to receive life everlasting. Obligation is laid by the Lord upon consecrated parents to see to it that their children are instructed in the law of God. They cannot disregard this obligation and expect God's favor. It is also the

duty of the parents to have their children in subjection and to carefully guide them in the way of righteousness. Upon this point note these words of the Scriptures addressed to the consecrated parents and to their children: "Children, obey your parents in the Lord: for this is right. Honour thy father and mother; which is the first commandment with promise, that it may be well with thee, and thou mayest live long on the earth. And, ye fathers, provoke not your children to wrath; but *bring them up in the nurture and admonition of the Lord.*"—Ephesians 6: 1-4.

Parents are the ones responsible for bringing children into the world, and it is their responsibility to properly instruct those children. The custom amongst the people of all nations of leaving the instruction of children to schools, [fol. 29] presided over by persons as teachers, is man's way, but it is not God's way. Parents cannot escape their obligation laid upon them by the Lord by leaving the instruction of their children to others. In matters pertaining to worldly affairs it seems that instruction of children by a competent teacher in the schools is proper, but as to the Word of God it is the first and bounden duty of consecrated parents to teach their children. That instruction must be given in the manner God has commanded. The consecrated parents must bring up their children "in the nurture . . . of the Lord"; which means as God has commanded. They must bring them up in the "admonition of the Lord"; which means that advice, counsel and instruction must be given to them in righteousness, as that instruction is set forth in the Word of God, the Bible. This is a sacred duty that no one has any right to interfere with and a duty that the parents have no right to ignore.

Life for the child is involved, and hence it is of great importance to the child that it be taught in the right way, that is, God's way. Otherwise it can never obtain life everlasting. Concerning this it is written in God's Word: "Train up a child in the way he should go; and when he is old, he will not depart from it."—Prov. 22: 6.

The foundation of the child's education must be laid in the Word of God, because that is the only way that leads to life everlasting. By nature a child's mind seeks information or knowledge. Only those persons who seek the way to life as the Lord has pointed out in his Word shall ever find it. This was emphasized by the Lord Jesus. Little

children were being brought to Jesus by their parents that they might learn of him, and the religious-minded tried to prevent the children from being brought to Jesus: "But when Jesus saw it, he was moved with indignation, and said unto them, Suffer the little children to come unto me; forbid them not; for to such belongeth the kingdom of God. Verily I say unto you, Whosoever shall not receive the kingdom of God as a little child, he shall in no wise enter therein. [fol. 30] And he took them in his arms, and blessed them, laying his hands upon them." (Mark 10: 14-16, *A. R. V.*) By these words the Lord clearly meant that those persons *who seek knowledge from him*, as the little children were seeking, can find the way of life; that the kingdom of God is for those and those only who seek the knowledge of truth found in God's Word and who then obey by doing what the Lord commands. It would be impossible to make it more emphatic concerning the obligation to teach the children, from their youth up, than what God has put in his Word.

COMMANDMENTS

The obligation upon the parents begins to be specially binding only after they have made a covenant to do the will of God and have been taken into a covenant with Jehovah God. Parents who are in a covenant to do the will of God must then inform themselves of his will or commandment toward themselves and toward their children, and then must obey those commandments and teach the same to their children, and admonish their children to obey. The state or nation, through its rules of education, has no right whatsoever to limit, interfere with, or hinder the instruction by parents of their children in the Word of God. By one inquiring how one might obtain eternal life by obeying God's commandments the question was propounded to Jesus: "Which is the great commandment in the law? Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second is like unto it, Thou shalt love thy neighbour as thyself. On these two commandments hang all the law and the prophets."—Matt. 22: 36-40.

To love God means that the person must be wholly and unselfishly devoted to Almighty God, seeking always to know and to do the will of God. This is well defined by the

words of Jesus addressed to Jehovah God: 'I delight to do thy will, O my God; thy law is written in my heart.' (Psalm 40:8) "Neighbour," within the meaning of the Scriptures, [fol. 31] is one's fellow creature who is also a believer on Jehovah and Christ, and who has agreed to do the will of God. God's commandment requires that 'one love his neighbor, even as he loves himself', that is to say, puts his brother Christian on an exact equality with himself. The only way a person can prove his love for God is by fully and sincerely obeying the commandments of God; as it is written. "If ye love me, keep my commandments." (John 14:15) The Christian proves his love for God by joyfully obeying God's commandments. (1 John 5:3) Where the commandments of men are in conflict with God's commandment there is but one thing to do, and that is, to OBEY GOD FIRST.

ONE GOD

There is one God Eternal, The Almighty, whose name is Jehovah. (Ps. 83:18) He is "from everlasting to everlasting", and from him proceeds everything that is good. (Ps. 90:2; Jas. 1:17) All the ways of God are perfect. (Deut. 32:4) God's commandments are perfect, and if a man could at all times deport himself exactly in harmony with God's law he would never make a mistake: "The law of the Lord is perfect, converting the soul: the testimony of the Lord is sure, making wise the simple: the statutes of the Lord are right, rejoicing the heart; the commandment of the Lord is pure, enlightening the eyes: the fear of the Lord is clean, enduring for ever: the judgments of the Lord are true and righteous altogether."—Ps. 19:7-9.

Jehovah God is the fountain of life and the Giver of life everlasting to them that obey him. (Ps. 36:9) Necessarily it follows that, if man makes some creature or thing a god to which he renders obeisance and obedience, it is written, he could never find or possess life everlasting. By reason of the goodness and loving-kindness of Almighty God this unchangeable commandment is given to all who have hope of life everlasting, to wit:

"Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth [fol. 32] beneath, or that is in the water under the earth;

thou shalt not bow down thyself to them, nor serve them; for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me."—Exodus 20:3-5.

The people who resided in Palestine at the time God sent his covenant people, the Israelites, there were worshipers of gods or demons; and in order to safeguard his covenant people from such demon-worship God commanded them that they should have nothing to do with other gods, lest they be ensnared by such. Again God emphasized this law or commandment to his covenant people by saying to them: "Neither shall thou serve their gods; FOR THAT WILL BE A SNARE UNTO THEE." (Deuteronomy 7:16) His commandment further emphasized his instruction that his covenant people must have nothing to do with GRAVEN IMAGES or even have a desire for them. "The graven images of their gods shall ye burn with fire; thou shalt not desire the silver or gold that is on them, nor take it unto thee, LEST THOU BE SNARED THEREIN: for it is an abomination to the Lord thy God."—Deuteronomy 7:25.

God, being the Fountain of life, and the only source of life, and life being granted upon condition of obedience, it was his great loving-kindness that provided for the protection of his covenant people by commanding them to refrain completely from giving any worship to any creature or thing. The Israelites violated the covenant of God and became ensnared, and that nation was destroyed. (Psalm 106:36, 40; Ezekiel 21:24-27) Thus God emphasized his unchangeable rule that a willful disobedience to his commandments means death to the creature or nation.

CHRISTIAN

A Christian is one who follows in the footsteps of Jesus Christ and joyfully obeys the commandments of Almighty God. All Christians must follow in the footsteps of Jesus Christ. (1 Peter 2:21) There is a wide difference between persons who have not made a covenant with the Lord and [fol. 33] those WHO HAVE COVENANTED to do his will. Those who enter into an agreement or covenant to be obedient to God, and who are accepted by him as followers of Christ Jesus, are entirely separate and distinct from others in the world. At the end of his earthly ministry Jesus uttered

these words, addressed to Jehovah God and concerning those who agree to follow in his steps, to wit: "I have given them thy word; and the world hath hated them, because they are not of the world, even as I am not of the world. I pray not that thou shouldest take them out of the world, but that thou shouldest keep them from the evil. THEY ARE NOT OF THE WORLD, even as I am not of the world. SANCTIFY THEM THROUGH THY TRUTH; THY WORD IS TRUTH."—John 17:14-17.

For centuries Satan has been the invisible ruler or "god of this [wicked] world". (2 Cor. 4:4; 1 John 5:19; John 14:30) Only those who have strictly obeyed the Lord's commandments have been saved from the influence and power of Satan the Devil. For this reason the faithful followers of Christ Jesus are instructed to 'keep yourselves unspotted from the world'. (Jas. 1:27) It follows, therefore, that rules that nations make concerning their people in general cannot always apply to the one who is in a covenant to do God's will.

All true and faithful followers of Christ Jesus are and indeed must be witnesses to Jehovah by declaring his name and his kingdom under and by Christ Jesus. (Isa. 43:10-12; Ex. 9:16) All such covenant people must preach the gospel of God's kingdom in obedience to his commandments. (Isa. 61:1, 2; Matt. 24:14) All persons thus devoted to God and his kingdom must TEACH THEIR CHILDREN the gospel of THE THEOCRACY or Kingdom. Jesus specifically instructed his followers to continuously pray to God: 'Thy kingdom come; thy will be done, on earth as in heaven.'—Matt. 6:10.

RELIGION AND CHRISTIANITY

Indulging in any ceremony or practice whatsoever contrary to the commandment of God is religious. Religion originated with the demons, of which Satan is the chief. It has at all times been used to ensnare and has ensnared multitudes of people and kept them blind to God's will or commandment. Religion has been the moving influence for the persecution and violent treatment of others, and particularly the persecution of Christians. [fol. 34]

Christians are those who do the will of God as commanded in his Word. They are called "Christians" because Christ Jesus is always obedient to God's will and he is the Head and Leader of all who are diligent to obey God's command-

ments. Christians are therefore commanded by the Lord to avoid anything and all things that are contrary to God's commandments.

SUPREME

The Word of Jehovah God, as expressed in the Bible, is His law, given to man for his correct guide: "Thy word is a lamp unto my feet, and a light unto my path." (Psalm 119:105) The law of God is supreme and is the only instruction that man can receive and be equipped to walk in the way of righteousness and life. "Every scripture inspired of God is also profitable for teaching, for reproof, for correction, for instruction which is in righteousness; that the man of God may be complete, furnished completely unto every good work."—2 Timothy 3:16, 17, *Rev. Ver.*

Every Christian is bound by his covenant to be obedient to God's law, as written in the Scriptures. If he voluntarily breaks the terms of his covenant he is subject to death. (Rom. 1:31, 32) All Christians conscientiously believe that the Word of God, as recorded in the Bible, is the truth; and if they willingly violate their conscientious belief, such act constitutes the breaking of their covenant. To CAUSE A CHRISTIAN TO VIOLATE HIS CONSCIENCE is denounced by the Scriptures as "SIN AGAINST CHRIST". (1 Cor. 8:12) These general rules stated in the Bible apply to all persons who believe on God and on Christ and who start to walk in the way of righteousness that leads to life everlasting.

CONSCIENCE

In forming the United States government the law-makers were careful to safeguard the conscience of men, particu- [fol. 35] larly concerning the worship of Almighty God. That part of the Constitution known as the Bill of Rights guarantees to all citizens the right to freely exercise the conscience relative to belief or non-belief, worship or non-worship. Almost all the state constitutions provide that all men shall be free to exercise their conscientious belief and to practice the same without interference unless that practice endangers the welfare of others. As an illustration: William Penn refused to remove his hat when entering the presence of others because he conscientiously believed that such would be a violation of God's commandment; and for that he was punished. Penn had much to do with framing the Constitution of the Commonwealth of

Pennsylvania, and especially with reference to the freedom of the exercise of conscientious worship. The highest court of that Commonwealth, discussing the principles of liberty of conscience, said: "Liberty necessarily embraces the right of the individual to exercise his conscience and THAT WITHOUT INTERFERENCE. That includes the right to worship the Supreme Being according to the dictates of his own conscience; to adopt any creed or hold any opinion whatsoever on the subject of religion; and TO DO or FORBEAR TO DO ANY ACT FOR CONSCIENCE' SAKE, the doing or the forbearing of which is not prejudicial to the public weal."—Commonwealth *v.* Lesner, 17 S. & R. 155.

The Supreme Court of the United States, in the case of Church *v.* United States, 143 U. S. 457, held that God is supreme and that America is a Christian nation. Leading law-writers of the nations of the world called "Christendom" have said, concerning the supremacy of the law of Almighty God, this, to wit: "It is binding over all the globe, in all countries, at all times No human laws are of any validity if contrary to this [God's law]; and such of them as are valid derive all their force and all their authority, mediately or immediately, from the original. The revealed or divine laws are to be found only in the Holy Scriptures. No human law should be suffered to contradict [fol. 36] this."—*Blackstone Commentaries*, Chase 3d Edition, pages 5-7.

"No external authority is to place itself between the finite being and the Infinite when the former is seeking to render homage that is due, and in a mode which commends itself to HIS CONSCIENCE and judgment as being suitable to him to render, and acceptable to its object."—Cooley's *Constitutional Limitations*, 8th Edition, page 968.

VIOLATION

In more recent years irreverent persons, who have no respect for the supreme law of God, and who have no faith in God or in Christ, have taken the lead in public affairs and in lawmaking. Such men, ambitious to appear as the acclaimed guardians of the public welfare, have conceived the idea of compelling school children to indulge in a fixed ceremony of saluting the flag. The idea appeared to be good to others who give no heed to God's Word, and soon school boards began to make rules compelling all the chil-

dren to indulge in such ceremony. This has developed until now there is a general hysteria abroad in the land, which has led to the punishment of children by ill-treating and by expelling them from school because they conscientiously decline to indulge in the religious ceremony of saluting any flag. Such children have been taught by their parents to obey God, and, because they obey their parents and obey God, the children are expelled from school and their parents are punished for not compelling their children to violate their conscience and to violate the law of Almighty God. This modern ceremony of "heiling" men and saluting flags first became prominent in modern times in the arbitrary government of Germany, the purpose of which is to put the state above God.

If boards of public education believed in Jehovah as the Almighty God and in Christ Jesus as the Savior of men, and that God's law is supreme, they would never attempt to compel any child to violate its conscience by saluting any flag or bowing down to any creature or thing. Boards of [fol. 37] education in the United States in recent years have shown a zeal in the one direction of attempting to instill patriotism in children, and in this they have completely ignored God's Word. The words of Mr. Justice Brandeis, late of the Supreme Court of the United States, are here quite appropriate, to wit: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding."—Olmstead *v.* United States, 277 U. S. 479.

In the time of the apostles there were religionists of the same category as above mentioned, and concerning which the apostle wrote: "For I bear them record that they have a zeal of God, but not according to knowledge. For they being ignorant of God's righteousness, and going about to establish their own righteousness, have not submitted themselves unto the righteousness of God. For Christ is the end of the law for righteousness to every one that believeth."—Romans 10:2-4.

The wrong is not in the flag, because the flag of the United States is the symbol of liberty and justice. The wrong is not in the salute, but, as to a conscientious Christian, the wrong lies in compelling or attempting to compel that one, against his conscience, to violate God's specific commandment. As above stated, God has specifically emphasized his law, that no form of worship or reverence shall be given to

any creature or thing, and to attempt to compel a person to violate his conscience and to violate God's commandment is absolutely wrong.

DEFINITIONS

According to the authoritative definitions, the saluting of the flag is a religious ceremony which gives reverence and worship, contrary to God's law. These definitions are given as follows, to wit:

"The flag, like the cross, is sacred. * * * The rules and regulations relative to human attitude toward national standards use strong, expressive words, as, 'Service to the Flag,' * * * 'Reverence for the Flag,' 'Devotion to the Flag.'—*The Encyclopedia Americana*, Vol. 11, page 316.

SACRED means "set apart by religious ceremony". [fol. 38]. DEVOTION means "a form of prayer or worship". —Webster.

REVERENCE means "veneration, expressing reverent feeling, worship".

SALUTE means "to greet with a kiss, to bow and courtesy, the uncovering of the head, a clasp or wave of the hand or the like * * * to honor formally or with ceremonious recognition". (*Century Dictionary*, page 5321) "To greet with a sign of welcome, love or deference, as a bow and embrace, or a wave of the hand."—Webster.

Under the word "image" this definition is given by Webster's Dictionary: "Image, in modern usage, commonly suggests RELIGIOUS VENERATION."

According to the Bible, 'Bow down to a symbol or image' includes all postures or attitudes toward the image, even a kiss. (See 1 Kings 19:18; Hosea 13:2; Job 31:25-27.)

Thus worldly lexicographers recognize the saluting of a flag as A RELIGIOUS FORMALISM. According to the Bible there cannot be the slightest doubt about it, because by such salute there is bestowed upon the image or thing reverence, devotion, a form of prayer or worship, and which thing, or image of that which it represents, is regarded as SACRED.

Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of

the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey *God's* law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment as set forth at Exodus 20:3-5 and emphasized in many other scriptures. The reason that such flag saluting is a violation of that commandment is that the salute attributes salvation to the state, which the flag represents, thus making the state a mighty one, or a "god", [fol. 39] whereas 'salvation belongeth alone to Jehovah, the Almighty God', and to none other. (Ps. 3:8) Jehovah's witnesses conscientiously and sincerely believe the Word of God and that their violation of their conscience and the violation of God's commandment would mean their certain destruction; as it is written: "For Moses truly said unto the fathers, A prophet shall the Lord your God raise up unto you of your brethren, like unto me; him shall ye hear in all things whatsoever he shall say unto you. And it shall come to pass, that every soul, which will not hear that prophet, shall be destroyed from among the people." —Acts 3:22,23.

Children who have been reared and taught in the nurture and admonition of God's law and who, because they are in a covenant to do God's will and conscientiously attempt to obey God, refuse to indulge in the ceremony of saluting any flag and for that reason are expelled from school and denied the right of education, what shall they do? The parents of those children, who have obeyed God's law to bring up their children "in the nurture and admonition of the Lord", are punished because they do not compel their children to violate their conscience and to violate God's law, and the parents are deprived of their liberty and right to have their children educated in the schools, as the law requires. What shall they do? Many children and many parents in the United States find themselves confronted with this important question.

Members of the boards of education have the responsibility of answering those questions. Let the members of the boards of education ask themselves this question: If I had made a consecration to God, and entered into a covenant to do His will, and conscientiously believed that the Word of God is supreme and that His Word forbids me to

indulge in flag saluting, what would I do if an attempt were made to compel me to violate my conscience and to violate God's law? Would I refuse to comply with man-made rules and suffer punishment at the hands of men, or would I break my covenant with God and suffer everlasting punishment [fol. 40] by destruction at the hand of God? These are serious questions and fraught with great weight. Every person must either choose to be obedient to God's commandment or choose to take a contrary course.

GOD FORGOTTEN

Most of the men who had to do with laying the foundation of the American government believed in God and relied upon His Word; but in recent years there has been a rapid falling away from faith in God and in the Bible, particularly so amongst those who have to do with governmental or public affairs. Today many of the lawyers and judges of the courts, as well as other public officials, entirely ignore the Word of God. There are some lawyers, however, who firmly hold to the fundamental principles relied upon by the nation, and who trust in God, and who believe that every man should be free to exercise his conscientious reverence and worship of God without interference and that the conscientious and sincere belief of all should be respected and not interfered with. More than one hundred years ago the courts of America laid down the rule that the INDIVIDUAL ALONE IS PRIVILEGED TO DETERMINE WHAT HE SHALL AND SHALL NOT BELIEVE, and that the COURTS HAVE NO RIGHT TO INTERFERE WITH BELIEF OR PRACTICE, except when the practice endangers the welfare of others. In 1784 Thomas Jefferson introduced in the Virginia legislature a bill which he had prepared, the preamble of which, written by him, reads as follows: "That to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty, it is declared that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

The Gobitis case, which originated in Pennsylvania, aptly illustrates the point with reference to forgetting or ignoring God. The Gobitis parents are conscientious Christians, in a

[fol. 41] covenant to do the will of Almighty God. They have brought up their children as commanded by the Scriptures, "in the nurture and admonition of the Lord." The children also consecrated themselves to God and entered into a covenant to do his will. The school board promulgated a rule requiring a daily practice of saluting the flag, and going through a certain ceremony in connection therewith. The Gobitis children, because of their conscientious belief that such flag saluting would be a violation of their covenant and a violation of God's law, asked to be excused therefrom and to remain silent during the ceremony. For this they were expelled from school. Suit was begun in the United States District Court, presided over by Judge Maris. That court held that the flag-salute rule could not be enforced against the Gobitis children because of their conscientious belief in God and His Word, and in his Opinion, amongst other things, he said: "In these days, when religious intolerance is again rearing its ugly head in other parts of the world, it is of the utmost importance that the liberties guaranteed to our citizens by the fundamental law be preserved from all encroachment."

In that Opinion Judge Maris quoted from the Opinion of Justice Gibson, rendered in the Lesher case, and further said: "In these words that eminent jurist [Justice Gibson] clearly stated that the principle which underlies the Constitutional provision of the state, and which is one of the fundamental bases upon which our nation was founded, namely, that individuals have the right not only to entertain any religious belief but also TO DO OR REFRAIN FROM DOING ANY ACT ON CONSCIENTIOUS GROUNDS, which does not prejudice the safety, morals, property or personal rights of the people. * * * On the contrary, that regulation [of the School Board], although undoubtedly adopted from patriotic motives, appears to have become in this case a means for the persecution of children for conscience' sake. Our beloved flag, the emblem of religious liberty, apparently has [fol. 42] been used as an instrument to impose a religious test as a condition of receiving the benefits of public education."

On appeal the United States Circuit Court of Appeals affirmed the judgment of the District Court. The case was then appealed to the Supreme Court of the United States, and there the judgments of the lower courts were reversed. The majority Opinion in that case DID NOT hold that citizens

can be compelled to salute the flag, but did hold that the board of education may make and enforce rules compelling children to indulge in the ceremony of flag saluting. The real issue was side-stepped. It is manifest that the writer of that Opinion does not believe in and rely upon God and Christ, but that he is controlled by science and public opinion. The first paragraph in that majority opinion says: "A grave responsibility confronts this Court whenever in course of litigation it must reconcile the conflicting claims of liberty and authority. But when the liberty invoked is liberty of conscience, and the authority is authority to safeguard the nation's fellowship, judicial conscience is put to its severest test. Of such a nature is the present controversy."

The court further in that opinion ruled that the responsibility is upon SCHOOL BOARDS OR BOARDS OF EDUCATION, and NOT UPON THE COURTS, to determine what rules shall be made and enforced. Further discussing the matter, the opinion says: "The influences which help toward a common feeling for the common country are manifold. Some may seem harsh and others no doubt are foolish. Surely, however, the end is legitimate. And the effective means for its attainment are still so uncertain and so unauthenticated by science as to preclude us from putting the widely prevalent belief in flag-saluting beyond the pale of legislative power."

"The wisdom of training children in patriotic impulses by those compulsions which necessarily pervade so much of the educational process IS NOT FOR OUR INDEPENDENT judgment. Even were we convinced of the folly of such a measure, such belief would be no proof of its unconstitutionality. [fol. 43] For ourselves, we might be tempted to say that the deepest patriotism is best engendered by giving unfettered scope to the most crochety beliefs. Perhaps it is best, even from the standpoint of those interests which ordinances like the one under review seek to promote, to give to the least popular sect leave from conformities like those here in issue. But the COURT ROOM IS NOT THE ARENA FOR DEBATING ISSUES OF EDUCATIONAL POLICY. It is not our province to choose among competing considerations in the subtle process of securing effective loyalty to the traditional ideals of democracy, while respecting at the same time individual idiosyncrasies among a people so diversified in racial origins and religious allegiances. So to hold would in effect

MAKE US THE SCHOOL BOARD FOR THE COUNTRY. THAT AUTHORITY HAS NOT BEEN GIVEN TO THIS COURT, nor should we assume it."

"Judicial review, itself a limitation on popular government, is a fundamental part of our constitutional scheme. But to the legislature no less than to courts is committed the guardianship of deeply-cherished liberties. Where all the effective means of inducing political changes are left free from interference, education in the abandonment of foolish legislation is itself a training in liberty. To fight out the wise use of legislative authority in the FORUM OF PUBLIC OPINION and before LEGISLATIVE ASSEMBLIES rather than to transfer such a contest to the judicial arena, serves to vindicate the self-confidence of a free people."

A minority Opinion was also rendered and filed in that case, and the learned Justice who differed from the majority Opinion, amongst other things, said: "The Constitution may well elicit expressions of loyalty to it and to the government which it created, but it does not command such expressions or otherwise give any indication that compulsory expressions of loyalty play any such part in our scheme of government as to override the constitutional protection of freedom of speech and religion. And while such expressions of loyalty, when voluntarily given, may promote national unity, it is quite another matter to say that [fol. 44] their compulsory expression by children in violation of THEIR OWN and THEIR PARENTS' religious convictions can be regarded as playing so important a part in our NATIONAL UNITY AS TO LEAVE SCHOOL BOARDS FREE TO EXACT IT DESPITE THE CONSTITUTIONAL GUARANTEE OF FREEDOM OF RELIGION. The very terms of the Bill of Rights preclude, it seems to me, any reconciliation of such compulsions with the constitutional guaranties by a legislative declaration that they are more important to the public welfare than the Bill of Rights.

"But even if this view be rejected and it is considered that there is some scope for the determination by legislature whether the citizen shall be compelled to give public expression of such sentiments contrary to his religion, I am not persuaded that we should refrain from passing upon the legislative judgment 'as long as the remedial channels of the democratic process remain open and unobstructed.' This seems to me no more than the surrender of the con-

stitutional protection of the liberty of small minorities to THE POPULAR WILL. * * *

"The Constitution expresses more than the conviction of the people that democratic processes must be preserved at all costs. It is also an expression of faith and a command that freedom of mind and spirit must be preserved, which government must obey, if it is to adhere to that justice and moderation WITHOUT WHICH NO FREE GOVERNMENT CAN EXIST. For this reason it would seem that legislation which operates to repress the religious freedom of small minorities, which is admittedly within the scope of the protection of the Bill of Rights, must at least be subject to the same judicial scrutiny as legislation which we have recently held to infringe the constitutional liberty of religious and racial minorities.

"With such scrutiny I cannot say that the inconveniences which may attend some sensible adjustment of school discipline in order that the religious convictions of these children may be spared, presents a problem so momentous or [fol. 45] pressing as to outweigh the freedom from compulsory violation of religious faith which has been thought worthy of constitutional protection."

The majority Opinion in the Gobitis case ignores the supremacy of God's law, declines to exercise its authority under the Constitution to restrain the infringement upon liberty properly exercised and which is guaranteed by the Bill of Rights, and shifts the burden upon BOARDS OF EDUCATION AND ADVISES FIGHTING IT OUT IN THE PUBLIC FORUM.

RESULT

Welfare and stability of the nation depend not upon ceremonies, such as saluting a flag, but do depend upon recognizing Jehovah God as supreme. Criminals salute the flag upon all occasions and then straightway violate the law of which the flag is a symbol.

The result of the majority Opinion in the Gobitis case breaking down the Constitutional guarantee of liberty of worship, and ignoring God's law, was seized upon as an excuse for immediate violent action against sincere Christians. It was like a lighted match applied to a field of dry grass. In communities dominated by the Catholic Hierarchy, who lead men that are controlled neither by law nor by reason, and where "Catholic Action" is rampant,

Catholic priests led fanatical or demonized mobs that assaulted, abused and ill-treated hundreds of Jehovah's witnesses merely because these witnesses remained faithful and true to God in declaring and obeying His Word. These mobs abused and ill-treated men, women and children, destroyed their property; drove them from their homes; burned their houses; burned their books; burned their money, and tied groups of them together, forced castor oil down their throats, herded them like wild beasts and drove them through the land; and committed numerous other deeds of wickedness against sincere Christians, and continue to do so to this day. Public officials, yielding to the influence of Catholic priests, broke into homes of private citizens, kidnaped and carried them from one state to [fol. 46] another, broke up their private meetings in the study of the Bible, burned their furniture and their literature. Sincere lawyers called upon the attorney-general frequently to invoke the law of the land against such lawless elements, and received promises that this would be done, but more than six months has passed and no action has been taken whatever against lawless mobs of this nature. The harsh, arbitrary, totalitarian-gestapo methods have rapidly spread throughout the United States since the rendering of that Opinion. Public opinion thus expressed in lawlessness, instead of instilling patriotism, has induced even greater lawlessness, and mobs continue to assault Christian people without any just cause or excuse. School boards in many of the states continue to expel children from school and to ill-treat them and their parents because the parents and children ask to be permitted to conscientiously obey the law of Almighty God without interference. Freedom of speech, and freedom of worship, are therefore rapidly disappearing in America. The nation is entirely forgetting God. Appropriate here for consideration are the forceful words of Mr. Justice Sutherland, late of the Supreme Court of the United States, to wit: "Do the people of this land—in the providence of God, favored, as they sometimes boast, above all others in the plenitude of their liberties—desire to preserve those so carefully protected by the First Amendment; liberty of religious worship * * *? If so, let them withstand all BEGINNINGS of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors

failed to stretch forth a saving hand while yet there was time."

If boards of education and other legislative bodies, and the nation in general, continue to ignore the law of God and to punish innocent children and parents because such conscientiously give heed to and obedience to the Word of God, what will be the end thereof? Can a nation once acknowledging itself to be "Christian", a nation that has based its fundamental law upon the law of God and recognized that [fol. 47] the law of God is supreme, and which nation then forgets God and ignores his law, expect to continue to exist? Let the Word of God give the answer to that question: "The wicked shall be turned into hell, and ALL THE NATIONS THAT FORGET GOD."—Psalm 9:17.

Will Almighty God excuse or pass by unnoticed those who directly or indirectly inflict punishment upon children and their parents for exercising their conscientious belief in obedience to God's law? Will Almighty God avenge his covenant people, whom he has selected to serve him? The answer is found in the words of Jesus, to wit: "And shall not God avenge his own elect, which cry day and night unto him, though he bear long with them? I tell you that he will avenge them speedily. Nevertheless, when the Son of man cometh, shall he find faith on the earth?"—Luke 18:7, 8.

LOYALTY

"Loyalty" means to be obedient to the law. Anyone who attempts to take the law into his own hands and compels others to obey it is lawless. Duly constituted authorities may make and enforce laws that are consistent with the supreme law. Should not all citizens be loyal to the country in which they reside? Yes, in harmony with and consistent with God's law, they should obey the laws of the land. Jesus Christ stated the rule by which all Christians must be governed: "Render to Caesar the things that are Caesar's, and to God the things that are God's."—Mark 12:17.

Necessarily that means obedience to God's law or commandments is first, and then obedience to the laws of the state that are not contradictory to God's law. Jesus emphatically stated the supremacy of God's law, and all HIS FOLLOWERS must abide thereby.

God commands his servants that they shall not give reverence, devotion or worship to any image or thing. No human authority can rightfully compel the doing of that which God's law forbids. If the child of God conscientiously believes that the flag-salute ceremony is a violation of God's law, and for that reason asks to be excused from indulging [fol. 48] in such ceremony, no human authority can rightfully interfere with the exercise of the conscience of that person who is devoted to Almighty God.

Jehovah's witnesses, being devoted followers of Christ Jesus, gladly obey all laws of the state or nation that are not in conflict with God's laws and commandments. This they do, not because of compulsion, but because such is right. That they may show their devotion to Almighty God and at the same time show their respect for the flag and the laws of the nation, all of God's covenant people, both parents and children that have agreed to be obedient to God, do willingly make and subscribe to the following pledge, to wit:

"I have pledged my unqualified allegiance and devotion to Jehovah, the Almighty God, and to His Kingdom, for which Jesus commands all Christians to pray.

"I respect the flag of the United States and acknowledge it as a symbol of freedom and justice to all.

"I pledge allegiance and obedience to all the laws of the United States that are consistent with God's law, as set forth in the Bible."

What honest, sincere and law-abiding person can find objection to that pledge? It places God and the nation in their proper places in the mind of all persons. The tendency will be to cause others to have greater reverence for Almighty God, have greater respect for the nation, and to make of them better citizens. In harmony with this it is written in the Scriptures: "Blessed is the nation whose God is the Lord [Jehovah]." (Psalm 33:12; *Am. Rev. Ver.*) The adoption of such a pledge would be entirely consistent with the course taken by the founders of the American nation. To deny Christian children the right and privilege to publicly make the foregoing pledge in the schools, and to compel them to violate their conscience by saluting the flag, as school boards have done, means that the human authorities of the nation are fighting against God and hence have

forgotten God. The responsibility, therefore, must rest upon the shoulders of those who refuse to recognize the [fol. 49] right of a consecrated Christian to exercise his conscientious belief in and devotion to Jehovah and his Word. Those who oppose Almighty God he declares are wicked, and the fate of such individuals and nations he announces in these words: "The wicked shall be turned into hell, and all the nations that forget God."—Psalm 9:17.

The highest court of the land has shifted the responsibility of compulsory flag-saluting upon boards of education or school boards, manifestly because some members of that court are ashamed to acknowledge Jehovah, the Almighty God, as the Supreme Being. The school boards must now decide whether it is of greater importance to compel children to violate their conscience in order to comply with human rules or to have them obey Almighty God. (Acts 4:19, 20) Which will do the greater amount of good to the people?

A somewhat similar question was before the United States Senate, and that law-making body went on record that the flag of the Papal Hierarchy is above the flag of the United States. The question before the Senate was, Whether the flag of the pope should be displayed during religious services on the ships of the nation above the flag of the United States. A senator from Massachusetts, in his argument before the Senate, took the position that the flag of the pope is the flag of God. In his argument before the Senate he used these words: "I for one refuse to depart from the time-honored American custom of placing the emblem of God above every other emblem of the world. I will not run down the penant of God for any other emblem." The senate, by a vote of 68 to 10, decided that the religious flag of the pope should be displayed above the flag of the United States. That occurred in February, 1929. (See the *Congressional Record* No. 47, page 2851.)

It is entirely inconsistent for the nation and its constituted legal authorities to attempt to compel little children to acknowledge the flag of the United States as above or superior to the specific commandments of Almighty God, [fol. 50] and to then punish such children and their parents because they insist on obeying God rather than men. The nation, by its senators, and previously by its courts, has acknowledged a religious institution as superior to laws of

the land; and even though they did it ignorantly, with stronger reasoning should we acknowledge the commandments of Almighty God as supreme and above the laws of man.

ALTERNATIVE

Two propositions are before the parents and children who are in a covenant to obey Almighty God:

(1) Participate in the prescribed ceremony of saluting the flag, even though the same be in violation of your conscientious devotion to Almighty God. Penalty for refusing is expulsion from school and additional punishment to the parents.

(2) Render obedience to Almighty God first and obey the rules of the state when such rules are not in conflict with God's commandments. Failure or refusal to do so means punishment at the hand of the Lord by everlasting death.

The person who is in a covenant with God to do his will does not hesitate as to which of these two propositions he will accept. He knows that the most severe punishment the State can inflict upon him is death, from which death God will resurrect his faithful servants who have been put to death by man because of faithfulness to God. He knows that the willful violation of God's commandment means death everlasting, from which there is no resurrection. He prefers to have everlasting life. He follows the advice of Christ Jesus, to wit: "And fear not them which kill the body, but are not able to kill the soul; but rather fear him which is able to destroy both soul and body in hell." (Matthew 10:28) The covenant people of Jehovah God unhesitatingly obey God first and at all times, and implicitly trust him as to the final result.

In taking that course the conscientious children and parents in obedience to God's commandments are following the same course as that taken by the apostles of Christ Jesus. Those faithful men were in a covenant to do God's [fol. 51] will, and, receiving his commandments, they obeyed by going about preaching the gospel. Their action was contrary to the law of the land, as declared by religious Jews. Those faithful men were punished by imprisonment, and yet, as soon as they were released, they straightway went again to publicly preaching the gospel of the Kingdom.

Again they were haled into court, charged with violating the law, and their reply was: "WE OUGHT TO OBEY GOD RATHER THAN MEN." (Acts 5:29) They chose to follow the rule which Jesus had announced. (March 12:17) The Bible records many instances showing God's approval of the course taken by the apostles in rendering full obedience to God rather than obeying men.

The government of Babylon promulgated a law requiring all persons to bow before a certain image. Three of God's typical covenant people were in Babylon. They remembered Jehovah had commanded: 'Thou shalt have no other gods before me; thou shalt not bow down to them nor serve them.' (Exodus 20:3-5) They had respect for the commandments of God. They refused to obey Babylon's command and were told by the highest authority of that nation that they would be put to death by burning. They replied to the law-enforcement body: 'We have no need to obey you in this matter; and if it be that you cast us into the fire, our God, whom we serve, is able to deliver us from the fiery furnace, and he will deliver us.' They were cast into the fiery furnace, which was so hot that it destroyed the men who cast them in, and from that fiery furnace God delivered them, with not even a scorch on their garments. God rewarded their faithfulness.—Daniel 3:15-27.

Daniel, another man in a covenant with God to do His will, was cast into a den of lions because he declined to obey the law of the nation, obedience to which law he conscientiously believed to be idolatry. For his faithfulness God delivered Daniel unharmed.—Daniel 6:1-23.

Over a period of many centuries Satan has caused men [fol. 52] to form conspiracies to kill or otherwise punish faithful servants of Almighty God. The hypocritical ceremony of flag saluting and "heiling" of men originated in Germany, with the Nazis, and is another effort on the part of the Devil to break down faithful devotion to Almighty God by men who have pledged themselves to serve God. That same Satanic, totalitarian rule is attempting to be enforced throughout the nations of the earth. In the United States the people have gotten on for 150 years or more without being compelled to salute flags; and the saluting of flags has never lessened crime. The most enthusiastic flag-wavers in America today are those who have the least respect for the law of man and no respect for the law of God.

On the contrary, Christians respect the flag, and are diligent to obey Almighty God, and they refuse to yield to the Satanic conspirators, and in this they have ample proof of God's approval.

At the eleventh chapter of Hebrews God caused to be recorded a list of faithful men who throughout the ages withstood the unreasonable rules or laws of nations which attempted to break down their devotion to the Almighty God. Those men steadfastly served God in the face of all opposition, and for such faithfulness they suffered cruel punishment at the hands of men. Of them the Lord's Word says: 'The world was not worthy of them.' They all received God's approval for their faithful obedience, and they have the assurance that they shall live forever.—Hebrews 11:1-40.

In the schools children are taught to respect the Constitutional guarantees of liberty of conscience, speech and worship. They should not at the same time be compelled to make hypocrites of themselves by violating those Constitutional guarantees. To compel children to violate God's commandments and their own conscience in order to meet the requirements of some human-made rule is doing violence to the child, and those who enforce such a rule are doing violence to the Lord, as He emphatically declared at Matthew 25:32-46.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed September 14, 1942

The defendants, jointly and severally, move the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendants, or any of them, upon which relief can be granted.

2. To dismiss the action because this Court is without jurisdiction over the subject matter alleged in the complaint for the following reasons:

(a) Because the statutes of the State of West Virginia, Section 5, Article 2, and Section 5a, Article 8, Chapter 18

of the Code of West Virginia, 1931, as amended, and the regulations thereunder promulgated by the State Board of Education in the plaintiffs' complaint alleged to be unconstitutional and in violation of the provisions of the Constitution of the United States, are a valid and lawful exercise by the State of West Virginia of its power to determine and regulate the educational policies of the State, and, as a matter of law, do not violate the First Amendment to the United States Constitution, the "due process" and "equal protection" clauses of the Fourteenth Amendment to the [fol. 54] United States Constitution, or any other provisions of the Constitution of the United States, as alleged in the complaint.

(b) Because the complaint presents no substantial controversy arising under the Constitution of the United States and involves no substantial federal question, but goes counter to a decision of the Supreme Court of the United States, handed down on the 3d day of June, 1940, in the case of *Minersville School District, Board of Education of Minersville School District, et al., Petitioners, v. Walter Gobitis, Individually, and Lillian Gobitis and William Gobitis, Minors, by Walter Gobitis, Their Next Friend*, reported in 310 U. S. 586, 84 Law. Ed. 1375, which said decision has in no manner been overruled or modified.

3. To dismiss the action because there is no act of the Congress of the United States which undertakes to legislate or purports to legislate with relation to the matters of the nature alleged in the complaint. What is referred to in the complaint as an "act of Congress (duly passed and approved June 22, 1942, Public Law 623, 77th Congress, Chapter 425, Second Session)" is in fact only a Joint Resolution, being House Joint Resolution 303, and, at most, as stated in the complaint, is "merely advisory, not mandatory," and, as a matter of law, such resolution in no manner and in no degree restricts or limits the power of the states with reference to educational policies.

Wherefore, the defendants pray the judgment of this Court whether they shall further answer, and that they be dismissed with their costs.

Dated: Charleston, West Virginia, September 10, 1942.

W. S. Wysong, Attorney General of the State of West Virginia. Address: The Capitol of West

Virginia, Charleston, West Virginia. Ira J. Partlow, Assistant Attorney General of the State of West Virginia. Address: The Capitol of West Virginia, Charleston, West Virginia, Attorneys for Defendants.

[fol. 55] To Hayden C. Covington, Esq., 117 Adams Street, Brooklyn, New York. Horace S. Meldahl, Esq., Davidson Building, Charleston, West Virginia.

Attorneys for the Plaintiffs:

Please take notice that the undersigned will bring the above motion on for hearing before said Court in the United States courtroom located in the United States Courthouse in the city of Charleston, West Virginia, on the 15th day of September, 1942, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

W. S. Wysong, Ira J. Partlow. Attorneys for Defendants.

[fol. 56] In District Court of the United States, Southern District of West Virginia

No. 242

Walter Barnette, Paul Stull, and Lucy McClure, Plaintiffs,

versus

The West Virginia State Board of Education, Composed of Hon. W. W. Trent, President, Mary H. Davisson, Thelma S. Loudin, Raymond Brewster, Lydia C. Hern, L. V. Thompson, and Mrs. Douglas W. Brown, and all other boards, officials, teachers and persons subject to the jurisdiction and control of said State Board of Education, Defendants.

Final Decree—October 6, 1942

This cause coming on to be heard on motion for interlocutory injunction before the undersigned constituting a District Court of three judges convened according to statute; and being heard upon the bill of complaint, as amended, the motion to dismiss and the arguments of co-nsel; and being submitted for final decree; and the Court having made

findings of fact and conclusions of law, which are filed herewith:

Now, therefore, for reasons set forth in the written opinion herewith filed, it is ordered, adjudged and decreed that the defendants, the West Virginia State Board of Education and the individual members thereof, and all boards, officials, teachers and other persons in any way subject to the jurisdiction of said West Virginia State Board of Education, be, and they are hereby, restrained and enjoined from requiring the children of the plaintiffs, or any other children having religious scruples against such action, to salute the flag of the United States, or any other flag, or from expelling such children from school for failure to salute it; and that plaintiffs recover of defendants the costs of suit to be taxed by the clerk of the court.

Enter: Oct. 6, 1942.

[fol. 57] John J. Parker, U. S. Circuit Judge, Fourth Circuit. Harry E. Watkins, U. S. District Judge for the Northern and Southern Districts of West Virginia. Ben Moore, U. S. District Judge for the Southern District of West Virginia.

[fol. 58] In District Court of the United States, Southern District of West Virginia

No. 242

Walter Barnette, Paul Stull, and Lucy McClure, Plaintiffs,

vs.

The West Virginia State Board of Education, composed of Hon. W. W. Trent, President, Mary H. Davisson, Thelma B. Loudin, Raymond Brewster, Lydia C. Hern, L. V. Thompson, and Mrs. Douglas W. Brown, and all other boards, officials, teachers and persons subject to the jurisdiction and control of said State Board of Education, Defendants

Finding of Fact and Conclusions of Law—October 6, 1942

In the above entitled cause the special court of three judges makes the following findings of fact and conclusions of law:

Findings of Fact

1. That this is a suit to protect rights and privileges guaranteed by the 14th Amendment to the Constitution of the United States and the matter in controversy exceeds the sum or value of $3,000.00.

2. That plaintiffs are citizens of West Virginia and have children who attend the public schools of that state.

3. That plaintiffs and their children are members of a sect known as "Jehovah's Witnesses" and, as such, have conscientious scruples based on religious grounds against saluting the flag of the United States or any other national flag.

4. That the defendant the West Virginia State Board of Education has adopted a regulation requiring children in the public schools of the state to salute the flag of the United States and providing for their expulsion from school upon failure to give such salute.

5. That because of their conscientious scruples based on religious belief, plaintiffs and their children will not comply [fol. 59] with the regulation of the Board of Education requiring the flag salute, and that the Board of Education unless restrained will expel plaintiffs' children from school for failure to comply therewith.

6. That, upon the expulsion of plaintiffs' children from school, they will be deprived of the benefit of education in the public schools to which they are entitled under the laws of West Virginia, and plaintiffs will have to pay to have them educated in private schools or be subject to prosecution under the compulsory education law of West Virginia for failure to send them to schools.

7. That this suit is brought by plaintiffs in behalf of themselves and all other persons similarly situated with respect to the enforcement of the regulation of the Board of Education.

Conclusions of Law

1. That the regulation of the Board of Education, in so far as it requires a flag salute from school children who have conscientious scruples based on grounds of religion against giving such salute, is violative of the rights of re-

ligious liberty guaranteed by the 14th Amendment against infringement by the states.

2. That plaintiffs are entitled to an injunction restraining the State Board of Education, its agents and employees, and all teachers in the schools of the state from requiring plaintiffs' children or the children of other persons for whom the suit is brought, having religious scruples against giving the flag salute, to give such salute or from expelling them from school for failure to give same.

Enter: Oct. 6, 1942.

John J. Parker, U. S. Circuit Judge, Fourth Circuit.
Harry E. Watkins, U. S. District Judge for the Northern and Southern Districts of West Virginia.
Ben Moore, U. S. District Judge, Southern District of West Virginia.

[fol. 50] IN DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF WEST VIRGINIA

WALTER BARNETTE, PAUL STULL, and LUCY MCCLURE, Plaintiffs,

vs.

THE WEST VIRGINIA STATE BOARD OF EDUCATION, composed of Hon. W. W. Trent, President, Mary H. Davisson, Thelma B. Loudin, Raymond Brewster, Lydia C. Hern, L. V. Thompson, and Mrs. Douglas W. Brown, and all other boards, officials, teachers and persons subject to the jurisdiction and control of said State Board of Education, Defendants.

On Motion for Interlocutory Injunction and Submission for Final Decree.

(Argued September 15, 1942)

Before Parker, Circuit Judge, and Harry E. Watkins and Moore, District Judges:

Hayden C. Covington and Horace S. Meldahl, for Plaintiffs, and William S. Wysong, Attorney General of West Virginia, and Ira J. Partlow, Assistant Attorney General of West Virginia, for Defendants.

OPINION—October 6, 1942

[fol. 61] PARKER, Circuit Judge:

This is a suit by three persons belonging to the sect known as "Jehovah's Witnesses", who have children attending the public schools of West Virginia, against the Board of Education of that state. It is brought by plaintiffs in behalf of themselves and their children and all other persons in the State of West Virginia in like situation, and its purpose is to secure an injunction restraining the State Board of Education from enforcing against them a regulation of the Board requiring children in the public schools to salute the American flag. They allege that they and their children and other persons belonging to the sect of "Jehovah's Witnesses" believe that a flag salute of the kind required by the Board is a violation of the second commandment of the Decalogue, as contained in the 20th chapter of the book of Exodus; that because of this belief they cannot comply with the regulation of the Board; that, if they fail to comply, the children will be expelled from school, and thus be deprived of the benefits of the state's public school system; and that plaintiffs, in such event, will have to provide them education in private schools at great expense or be subjected to prosecution for crime for failing to send them to school, as required by the compulsory school attendance law of the state. They contend, therefore, that the regulation amounts to a denial of religious liberty and is violative of rights which the first amendment to the federal Constitution protects against impairment by the Federal government and which the 14th Amendment protects against impairment by the states.

A motion has been made to dismiss the bill on the ground that the regulation of the Board is a proper exercise of power vested in it by the State of West Virginia, and that, under the doctrine of Minersville District v. Gobitis, 310 U. S. 586, the flag salute which it requires cannot be held a violation of the religious rights of plaintiffs. The case was heard on application for interlocutory injunction; but the parties have agreed that it be submitted for final decree on the bill and motion to dismiss. No question is raised as to jurisdiction; and it appears from the face of the bill that the case is one arising under the Constitution of the United States involving, as to each plaintiff, a sum in excess of

$3,000.00, since it is alleged that each of plaintiffs would be required to incur expense in excess of that amount if their [fol. 62] children should be excluded from the public schools. And it seems clear that there is jurisdiction, irrespective of the amount involved, since the suit is for the protection of rights and privileges guaranteed by the due process clause of the 14th Amendment, and jurisdiction is given by Judicial Code Sec. 24(14). Hague v. C. I. O. 307 U. S. 496, 525. There is, therefore, but one question for our decision, viz.: whether children who for religious reasons have conscientious scruples against saluting the flag of the country, can lawfully be required to salute it. We think that this question must be answered in the negative.

Ordinarily we would feel constrained to follow an unreversed decision of the Supreme Court of the United States, whether we agree with it or not. It is true that decisions are but evidences of the law and not the law itself; but the decisions of the Supreme Court must be accepted by the lower courts as binding upon them if any orderly administration of justice is to be attained. The developments with respect to the Gobitis case, however, are such that we do not feel that it is incumbent upon us to accept it as binding authority. Of the seven justices now members of the Supreme Court who participated in that decision, four have given public expression to the view that it is unsound, the present Chief Justice in his dissenting opinion rendered therein and three other justices in a special dissenting opinion in Jones v. City of Opelika — U. S. —, 62 S. Ct. 1231, 1251. The majority of the court in Jones v. City of Opelika, moreover, thought it worth while to distinguish the decision in the Gobitis case, instead of relying upon it as supporting authority. Under such circumstances and believing, as we do, that the flag salute here required is violative of religious liberty when required of persons holding the religious views of plaintiffs, we feel that we would be recreant to our duty as judges, if through a blind following of a decision which the Supreme Court itself has thus impaired as an authority, we should deny protection to rights which we regard as among the most sacred of those protected by constitutional guaranties.

There is, of course, nothing improper in requiring a flag salute in the schools. On the contrary, we regard it as a highly desirable ceremony calculated to inspire in the pupils

a proper love of country and reverence for its institutions. [fol. 63] And, from our point of view, we see nothing in the salute which could reasonably be held a violation of any of the commandments in the Bible or of any of the duties owing by man to his Maker. But this is not the question before us. Admittedly plaintiffs and their children do have conscientious scruples, whether reasonable or not, against saluting the flag, and these scruples are based on religious grounds. If they are required to salute the flag, or are denied rights or privileges which belong to them as citizens because they fail to salute it, they are unquestionably denied that religious freedom which the Constitution guarantees. The right of religious freedom embraces not only the right to worship God according to the dictates of one's conscience, but also the right "to do, or forbear to do, any act, for conscience sake, the doing or forbearing of which is not prejudicial to the public weal". Chief Justice Gibson in Commonwealth v. Lesher 17 Serg. & R. (Pa.) 155.

Courts may decide whether the public welfare is jeopardized by acts done or omitted because of religious belief; but they have nothing to do with determining the reasonableness of the belief. That is necessarily a matter of individual conscience. There is hardly a group of religious people to be found in the world who do not hold to beliefs and regard practices as important which seem utterly foolish and lacking in reason to others equally wise and religious; and for the courts to attempt to distinguish between religious beliefs or practices on the ground that they are reasonable or unreasonable would be for them to embark upon a hopeless undertaking and one which would inevitably result in the end of religious liberty. There is not a religious persecution in history that was not justified in the eyes of those engaging in it on the ground that it was reasonable and right and that the persons whose practices were suppressed were guilty of stubborn folly hurtful to the general welfare. The fathers of this country were familiar with persecution of this character; and one of their chief purposes in leaving friends and kindred and settling here was to establish a nation in which every man might worship God in accordance with the dictates of his own conscience and without interference from those who might not agree with him. The religious freedom guaranteed by the 1st and 14th Amendments means that he shall have the right to do [fol. 64] this, whether his belief is reasonable or not, with-

out interference from anyone, so long as his action or refusal to act is not directly harmful to the society of which he forms a part.

This does not mean, of course, that what a man may do or refrain from doing in the name of religious liberty is without limitations. He must render to Caesar the things that are Caesar's as well as to God the things that are God's. He may not refuse to bear arms or pay taxes because of religious scruples, nor may he engage in polygamy or any other practice directly hurtful to the safety, morals, health or general welfare of the community. See cases cited in Minersville School District v. Gobitis, 3 Cir. 108 F. 2d 683, 689. To justify the overriding of religious scruples, however, there must be a clear justification therefor in the necessities of national or community life. Like the right of free speech, it is not to be overborne by the police power, unless its exercise presents a clear and present danger to the community. Cf. Herndon v. Lowry 301 U. S. 242, where it was said: "The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state." Religious freedom is no less sacred or important to the future of the Republic than freedom of speech; and if speech tending to the overthrow of the government but not constituting a clear and present danger may not be forbidden because of the guaranty of free speech, it is difficult to see how it can be held that conscientious scruples against giving a flag salute must give way to an educational policy having only indirect relation, at most, to the public safety. Surely, it cannot be that the nation is endangered more by the refusal of school children, for religious reasons, to salute the flag than by the advocacy on the part of grown men of doctrines which tend towards the overthrow of the government.

The suggestion that the courts are precluded by the action of state legislative authorities in deciding when rights of religious freedom must yield to the exercise of the police power would, of course, nullify the constitutional guaranty. It would not be worth the paper it is written on, if no legis- [fol. 65] lature or school board were bound to respect it

except in so far as it might accord with the policy they might choose to follow. For the courts to so hold would be for them to abdicate the most important duty which rests on them under the Constitution. The tyranny of majorities over the rights of individuals or helpless minorities has always been recognized as one of the great dangers of popular government. The fathers sought to guard against this danger by writing into the Constitution a bill of rights guaranteeing to every individual certain fundamental liberties, of which he might not be deprived by any exercise whatever of governmental power. This bill of rights is not a mere guide for the exercise of legislative discretion. It is a part of the fundamental law of the land, and is to be enforced as such by the courts. If legislation or regulations of boards conflict with it, they must give way; for the fundamental law is of superior obligation. It is true of freedom of religion, as was said of freedom of speech in Schneider v. State 308 U. S. 147, 161:

"In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

Can it be said by the Court, then, in the exercise of the duty to examine the regulation here in question, that the requirement that school children salute the flag has such direct relation to the safety of the state, that the conscientious objections of plaintiffs must give way to it? Or to phrase the matter differently, must the religious freedom of plaintiffs give way because there is a clear and present danger to the state if these school children do not salute the flag, [fol. 66] as they are required to do? It seems to us that to ask these questions is to answer them, and to answer them in the negative. As fine a ceremony as the flag salute is, it can have at most only an indirect influence on the national

safety; and no clear and present danger will result to anyone if the children of this sect are allowed to refrain from saluting because of their conscientious scruples, however groundless we may personally think these scruples to be. It certainly cannot strengthen the Republic, or help the state in any way, to require persons to give a salute which they have conscientious scruples against giving, or to deprive them of an education because they refuse to give it. As was well said by Chief Justice Lehman of New York in his concurring opinion in People v. Sandstrom 279 N. Y. 523, 18 N. E. 2d 840: "The salute of the flag is a gesture of love and respect—fine when there is real love and respect back of the gesture. The flag is dishonored by a salute by a child in reluctant and terrified obedience to a command of secular authority which clashes with the dictates of conscience."

The salute to the flag is an expression of the homage of the soul. To force it upon one who has conscientious scruples against giving it, is petty tyranny unworthy of the spirit of this Republic and forbidden, we think, by the fundamental law. This court will not countenance such tyranny but will use the power at its command to see that rights guaranteed by the fundamental law are respected. We are not impressed by the argument that the powers of the School Board are limited by reason of the passage of the joint resolution of June 22, 1942, pertaining to the use and display of the flag; but we are clearly of opinion that the regulation of the Board requiring that school children salute the flag is void in so far as it applies to children having conscientious scruples against giving such salute and that, as to them, its enforcement should be enjoined. Injunctive order will issue accordingly.

Injunction Granted.

I concur:

Harry E. Watkins, U. S. District Judge for the Northern and Southern Districts of West Virginia.

I concur:

Ben Moore, U. S. District Judge for the Southern District of West Virginia.

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed October 31, 1942

This cause coming on further to be heard upon the Petition of The West Virginia State Board of Education, composed of W. W. Trent, President, Mary H. Davisson, Thelma B. Loudin, Raymond Brewster, Lydia C. Hern, L. V. Thompson, and Mrs. Douglas W. Brown, for the allowance of an appeal to the Supreme Court of the United States, it is ordered:

That the appeal prayed for is granted; that the amount of the bond for costs on appeal shall be in the sum of $250.00.

That the Clerk of this Court transmit to the Supreme Court of the United States, in the manner provided by law, a transcript of such parts of the record and proceedings herein, duly authenticated, as the parties defendants and plaintiffs may by praecipe duly designate.

[fol. 68] That a citation be issued admonishing the plaintiffs to be and appear in the Supreme Court of the United States on or before the 9th day of December, 1942.

Whereupon came W. W. Trent, one of the defendants, and tendered a bond for costs on appeal, executed by him, as Principal, and by Continental Casualty Company, a corporation, as surety, in the amount of $250.00, conditioned as provided by law, which bond having been inspected by the Court, is approved and ordered filed.

John J. Parker, Judge of the United States Circuit Court for the Fourth Circuit. Harry E. Watkins, Judge of the District Court of the United States for the Northern and Southern Districts of West Virginia. Ben Moore, Judge of the District Court of the United States for the Southern District of West Virginia.

[fol. 69] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed October 31, 1942

To the Honorable John J. Parker, Judge of the United States Circuit Court for the Fourth Circuit; the Honorable Harry E. Watkins, Judge of the District Court of the United States for the Northern and Southern Districts of West Virginia, and the Honorable Ben Moore, Judge of the District Court of the United States for the Southern District of West Virginia, Composing a Statutory Court under the Provisions of Section 380, Amended, Title 28 of the United States Code, Annotated:

Now come The West Virginia State Board of Education, composed of W. W. Trent, President, Mary H. Davisson, Thelma B. Loudin, Raymond Brewster, Lydia C. Hern, L. V. Thompson, and Mrs. Douglas W. Brown, and considering themselves aggrieved by the decree entered on the 6th day of October, 1942, in the above entitled cause, [fol. 70] awarding a permanent injunction restraining and enjoining the defendants from requiring the children of the plaintiffs, or any other children having religious scruples against such action, to salute the flag of the United States or any other flag, or from expelling such children from school for failure to salute it, as prayed for in the plaintiffs' complaint, does hereby appeal therefrom to the Supreme Court of the United States, for reasons specified in the assignment of errors, which is filed herewith, and prays:

1. That this appeal be allowed;

2. That a citation be issued to the above named plaintiffs, Walter Barnette, Paul Stull, and Lucy McClure, as provided by law;

3. That a transcript of the record, proceedings and papers upon which said decree was predicated, duly authenticated, be sent to the Supreme Court of the United States, together with the typewritten statement of defendants disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review the decree, which statement is filed herewith.

4. That the Court decree that the bond, in the sum of $250.00, conditioned according to law, and filed herewith, is in a sufficient amount, and that if the Court be of opinion that the amount is not sufficient, that it fix the amount of the bond.

The West Virginia State Board of Education, Composed of W. W. Trent, President; Mary H. Davisson, Thelma B. Loudin, Raymond Brewster, Lydia C. Hern, L. V. Thompson, and Mrs. Douglas W. Brown, by Ira J. Partlow, Assistant Attorney General of West Virginia, Counsel for Defendants.

[fol. 71] The undersigned counsel of record for the plaintiffs hereby acknowledge service of a copy of the foregoing petition for appeal.

Dated at Charleston, West Virginia, this 29th day of October, 1942.

Hayden C. Covington, per H. S. Meldahl, Horace S. Meldahl, Counsel for Plaintiffs.

Appeal allowed upon defendants giving bond conditioned as required by law, in the sum of $250.00, the same to secure the payment of costs.

John J. Parker, Judge of the United States Circuit Court for the Fourth Circuit. Harry E. Watkins, Judge of the District Court of the United States for the Northern and Southern Districts of West Virginia. Ben Moore, Judge of the District Court of the United States for the Southern District of West Virginia.

[fol. 72] In United States District Court

[Title omitted]

Assignment of Errors—Filed October 31, 1942

Come now The West Virginia State Board of Education, composed of W. W. Trent, President Mary H. Davisson, Thelma B. Loudin, Raymond Brewster, Lydia C. Hern, L. V. Thompson, and Mrs. Douglas W. Brown, defendants in the above styled cause, by their counsel, and say that there are manifest errors in the record, proceedings and final decree in said cause, upon which they will rely upon

their appeal from the decree entered on the 6th day of October, 1942, and for the purpose of having the cause reviewed in the Supreme Court of the United States make the following assignment of errors, to-wit:

1. The Court erred in overruling defendants' motion to dismiss plaintiffs' complaint for want of jurisdiction.

[fol. 73] 2. The Court erred in holding, as a conclusion of law, that the regulation of The West Virginia State Board of Education, in so far as it requires a flag salute from school children who have conscientious scruples based on grounds of religion against giving such salute, is violative of the rights of religious liberty guaranteed by the 14th Amendment against infringement by the states.

3. The Court erred in holding, as a conclusion of law, that plaintiffs are entitled to an injunction restraining the State Board of Education, its agents and employees, and all teachers in the schools of the state from requiring plaintiffs' children or the children of other persons for whom the suit is brought, having religious scruples against giving the flag salute, to give such salute or from expelling them from school for failure to give same.

4. The Court erred in awarding the permanent injunction prayed for in the plaintiffs' bill.

5. The decision of the Court is counter to a decision of the Supreme Court of the United States handed down on June 3, 1940, in the case of *Minersville School District, Board of Education of Minersville School District, et al., Petitioners, v. Walter Gobitis, Individually, and Lillian Gobitis and William Gobitis, Minors, by Walter Gobitis, Their Next Friend*, reported in 310 U. S. 586, 84 Law. ed. 1375, which said decision has in no manner been overruled or modified.

Wherefore, the defendants, The West Virginia State Board of Education, composed of W. W. Trent, President, Mary H. Davisson, Thelma B. Loudin, Raymond Brewster, Lydia C. Hern, L. V. Thompson, and Mrs. Douglas W. Brown, pray that the decree of the District Court of the United States for the Southern District of West Virginia be reversed, and that the injunction granted by said Court

be dissolved, and that a judgment be entered in accordance with the rights of defendants.

Ira J. Partlow, Assistant Attorney General of West Virginia, Counsel for Defendants.

[fol. 74] The undersigned, counsel of record for the plaintiffs, hereby acknowledge service of a copy of the foregoing assignment of errors.

Dated at Charleston, West Virginia, this 29th day of October, 1942.

Horace S. Meldahl, Counsel for Plaintiffs.

[fols. 75-76] Cost Bond on appeal for $250.00 approved and filed October 31, 1942 omitted in printing.

[fols. 77-84] Citation in usual form showing service on Horace S. Meldahl omitted in printing.

[fol. 85] In United States District Court

[Title omitted]

Stipulation as to Record—Filed November 17, 1942

It is hereby stipulated and agreed by and between the parties hereto that for the purpose of appeal, which has been allowed herein, to the Supreme Court of the United States, the Clerk of the District Court of the United States for the Southern District of West Virginia be and he is hereby requested to prepare and forward to the Clerk of the Supreme Court of the United States the transcript of the record on appeal which shall include the following portions of the record:

1. The first amended complaint of the plaintiffs with its exhibits.
2. Defendants' motion to dismiss plaintiffs' complaint.
3. The Court's findings of facts and conclusions of law.
4. The opinion of the Court.

[fol. 86] 5. The final decree of the Court entered October 6, 1942.

6. Petition for allowance of appeal with acknowledgment of service thereof.

7. Assignment of errors accompanying petition for allowance of appeal, and prayer for reversal contained therein and acknowledgment of service thereof.

8. Jurisdictional statement.

9. Order allowing appeal to the Supreme Court of the United States.

10. Bond for costs on appeal to the Supreme Court of the United States.

11. Citation and acknowledgment of service thereof.

12. This stipulation.

It is requested that this transcript be prepared as required by law, the rules of this Court and the rules of the Supreme Court of the United States and that the same be filed in the office of the Clerk of the United States Supreme Court within the time prescribed by this Court in its order of this Court enlarging and extending time.

It is further hereby stipulated and agreed by and between the parties hereto that this stipulation shall be in lieu of a praecipe indicating the portions of the record to be incorporated into the transcript of the record *or* appeal.

Dated this 17th day of November, 1942.

W. S. Wysong, Attorney General of West Virginia; Samuel Biern, Assistant Attorney General of West Virginia, Counsel for Appellants. Horace S. Meldahl, Counsel for Appellees.

[fol. 87] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 88] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

[Title omitted]

APPELLANTS' STATEMENT OF POINTS AND DESIGNATION OF PORTIONS OF RECORD ON APPEAL—Filed December 16, 1942

I

Come now the appellants in the above entitled cause, and for their statement of the points on which they intend to rely in their appeal to this Court adopt the points contained in the assignment of errors heretofore filed herein.

II

Appellants herein designate defendants' cost bond on appeal and jurisdictional statement as being unnecessary for the consideration of the points herein relied upon. Appellants designate all other portions of the record as being necessary for such consideration.

(S.) W. S. Wysong, Attorney General; (S.) Samuel Biern, Assistant Attorney General, Counsel for Appellants.

Service of foregoing statement on behalf of each of the appellees is acknowledged this 27th day of November, 1942.

(S.) Hayden C. Covington, Counsel for Appellees.

[fol. 89] In the Supreme Court of the United States

Designation of Parts of the Record To Be Printed—Filed December 16, 1942

To the Clerk of the United States Supreme Court:

You will please print all of the documents contained in the above captioned cause now on file with your office pursuant to dispatch thereof to you by the Clerk of the District Court of the United States for the Southern District of West Virginia, to wit:

1. The amended complaint.
2. The exhibit annexed to the amended complaint, namely, the booklet entitled "God and the State", in entirety.
3. Defendants' motion to dismiss.
4. Judgment of the court granting injunction.
5. Opinion and findings of fact.
6. Petition for allowance of appeal.
7. Assignments of error.
8. Order allowing appeal.
9. Citation.

Omitting to print cost bond and jurisdictional statement.

Dated, November 17, 1942.

Hayden C. Covington, Attorney for Appellees.

[fol. 90] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—January 4, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 47,092. S. West Virginia, D. C. U. S. Term No. 591. The West Virginia State Board of Education, etc., et al., Appellants, vs. Walter Barnette, Paul Stull and Lucy McClure. Filed December 16, 1942. Term No. 591, O. T. 1942.